

AMENDMENT AND RESPONSE TO OFFICE ACTION DATED DECEMBER 13, 2006
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REMARKS

Status of Claims

Claim 77 is amended herein.

Following amendment herein, Claims 19, 20, 22-31, 37, 39, 41, 43-54, 56-58, and 74-79 remain pending.

No amendment introduces new matter into this application.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 19, 20, 22-31, 37, 39, 41, 43-54, 56-58 and 74-79 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

The Patent and Trademark Office ("PTO") states, '[i]ndependent claims 19, 37, and 76 recite that the flakes are contained "over the entire thickness" of the linoleum sheet.' Office Action, Page 2, Item 2, lines 4-5. According to the PTO, therefore, 'it is unclear whether the linoleum sheet contains a single flake that extends the "entire thickness" of the sheet or does the sheet contain many flakes distributed throughout its thickness. It is simply unclear what is meant by "over the entire thickness". Appropriate correction or clarification is required.' Office Action, Page 2, last 5 lines.

Applicants respectfully disagree with the PTO's assertion that it is unclear what is meant by "over the entire thickness". Applicants' flakes are distributed throughout the entire thickness of a sheet structure. See, for example, Applicants' Figure 3 (on Sheet 3 of 3). Further, Applicants' direct the PTO to paragraph [0010] in the published application of the present invention, Patent Application Publication No. US2002/0020128, which states,

... the flakes have the advantage to essentially orientate flat to the linoleum surface within the calender nip. Owing to the rather two-dimensional flat-shaped particle structure of the flakes, this alignment takes place over the whole cross section of the final planar structure, i.e. on the upper side as well as the lower side, so that the flakes are uniformly distributed over the entire structure. This specific structure thus obtained guarantees a completely patterned planar structure that maintains the specific patterned structure even at stronger abrasion.

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The disclosure of the specification is sufficient through express, implicit, and inherent disclosure to support the patentability of the claims under 35 U.S.C. § 112, second paragraph. Thus, Applicants assert that one of skill in the art could readily understand the meaning of "over the entire thickness". Accordingly, Applicants respectfully request that the rejection of the claims under 35 U.S.C. § 112, second paragraph, be withdrawn.

Rejection Under 35 U.S.C. § 102(b) in View of Dobry *et al.*

Claims 19, 20, 22-31, 37, 39, 41, 43-54, 56-58, 74, 75, 78 and 79 were rejected under 35 U.S.C. §102(b), as being anticipated by Dobry *et al.* (U.S. Patent No. 2,962,081) ("Dobry *et al.*").

The PTO states,

Dobry *et al.* disclose plastic composition sheets that are adapted for use as floor coverings wherein the process of making such a plastic composition sheet entails depositing uniformly on a backing material a smooth layer of a mixture of fine particles and flat plastic chips (Column 1, lines 49-65).

Office Action, page 3, Item 3, lines 3-6. Further, in response to Applicants' arguments filed on September 26, 2006, the Examiner states,

Furthermore, Figure 2 is a cross-sectional view of the surface covering and specifically shows that the plastic chips (10) are imbedded in the matrix of fine granules (11) and hence are present over the whole cross section of the plastic composition. Layer 20 is a backing material and does not form part of the sheet comprising the plastic chips and the matrix of fine granules.

Office Action, Page 6, lines 2-7.

Respectfully, Applicants' disagree with the PTO's assertion for reasons of record and as set forth herein.

To anticipate a claim, the reference must teach every element of the claim. MPEP §2131.

Dobry *et al.* does not anticipate the present claims at least because an element as set forth in the present claims, namely the linoleum sheet containing over the entire thickness thereof flakes, is not found, either expressly or inherently described, in Dobry *et al.* Nowhere, does Dobry *et al.* disclose the linoleum sheet containing over the entire thickness thereof flakes.

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Applicants' respectfully point out that the PTO mischaracterizes the teachings of Dobry *et al.* For example, in contrast to the PTO's characterization referenced above, the relevant portion of Column 1, lines 49-65 of Dobry *et al.* states verbatim,

... depositing uniformly on a backing material a smooth layer of a mixture of fine particles ... then scattering materially larger, irregular, flat plastic chips on top of the fine particles in such a manner that the chips lie flat and relatively few of them overlap.

Office Action, Column 1, Lines 61-65. This statement in Dobry *et al.* is consistent with Figure 2 of the reference, and precludes the plastic chips 10 from being distributed throughout the entire thickness or cross section of the sheet, as claimed in Applicants' invention. Thus, the PTO's assertion that the plastic chips (10) are "hence present over the whole cross section of the plastic composition" is neither taught or suggested by Dobry *et al.* Office Action, Page 6, lines 4-6.

Accordingly, Dobry *et al.* does not anticipate the instant claims at least because the reference does not teach or suggest the linoleum sheet containing over the entire thickness thereof flakes.

Withdrawal of the present rejection is respectfully requested in light of the remarks above.

Rejection Under 35 U.S.C. § 102(b) in View of Harris

Claims 19, 20, 22-31, 37, 39, 41, 43-54, 56-58, 74, 75, 78 and 79 were rejected under 35 U.S.C. §102(b), as being anticipated by Harris (U.S. Patent No. 3,325,337) ("Harris").

The PTO states,

Harris discloses a resilient linoleum surface covering hav[ing] inlaid design elements in which particles of accent material are visible interiorly of the design elements (Column 1, lines 10-15). The molded linoleum surface coverings have inlaid, novel design effects which are achieved by using mottle of special composition. The mottle comprises particles of clear or transparent vinyl resin mix which is compatible with linoleum and particles of linoleum binder (Column 2, lines 5-10).

Office Action page 4, lines 10-15; Emphasis added. Further, in response to Applicants' arguments filed on September 26, 2006, the Examiner states,

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The intermediate product taught by Harris meet[s] the limitations of the claimed invention. The mottle comprises particles of clear or transparent vinyl resin mix which is compatible with linoleum and particles of a linoleum binder.

Office Action page 4, lines 10-15; Emphasis added.

Respectfully, Applicants' disagree with the PTO's assertion for reasons of record and as set forth herein.

To anticipate a claim, the reference must teach every element of the claim. MPEP §2131.

Harris does not anticipate the present claims at least because an element as set forth in the present claims, namely the flakes comprising an organic polymeric material, is not found, either expressly or inherently described, in the Harris reference. Nowhere, does Harris disclose flakes comprising an organic polymer material.

Harris discloses that, "[s]pecific stencils feed the specially prepared mottle onto the backing material to form the special design elements in which the particles of accent materials which are mixed with the special mottle composition, upon consolidation and ageing, are visible throughout the design element and create a three-dimensional highlighted effect." Harris, Column 2, lines 29-35. According to Harris, particles of accent material such as particles of metallic glitter, including metallic chips of aluminum, may be used in the inlaid mottle portion of the sheet structure. Harris, Column 2, lines 61-67.

Thus, Harris' inlaid mottle portion, which includes a clear or substantially transparent vinyl resin mix, acts as a "translucent window" in which the particles of accent material may be highlighted. See Harris, Column 1, lines 70-73 and Column 2, 9-11; See also Harris, Figure 2 (illustrating a cross-section of a segment of a floor covering showing both the linoleum portion and the inlaid mottle portion with the particles of accent material, *i.e.*, metallic glitter particles).

Accordingly, Harris does not anticipate the instant claims at least because Harris does not teach or suggest flakes comprising an organic polymer material.

Withdrawal of the present rejection is respectfully requested in light of the remarks above.

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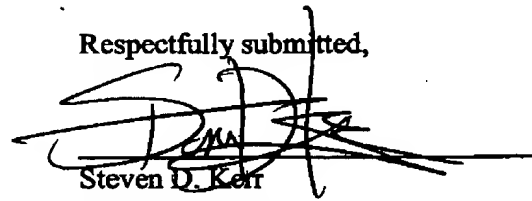
CONCLUSION

Applicants believe these Remarks place the claims in condition for allowance and such action is respectfully requested. If issues may be resolved through Examiner's Amendment, or clarified in any manner, a call to the undersigned attorney is respectfully requested.

No fees are believed due, however, the Commissioner is hereby authorized to charge any deficiencies which may be required, or credit any overpayment, to Deposit Account Number 09-0528, referencing number 41461.0015.1.

March 13, 2007
Date

Respectfully submitted,


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